# APPENDIX

## INTERSTATE COMMERCE COMMISSION

NO. MC-C-223

PLANTERS NUT & CHOCOLATE COMPANY ET AL.

*vs.*

AMERICAN TRANSFER COMPANY ET AL.

*Submitted October 27, 1941. Decided January 21, 1942.*

Upon complaint that the refusal of certain motor common carriers to interchange complainants' interstate shipments with certain other motor common carriers at Richmond and Roanoke, Va., violated the Interstate Commerce Act, found that the refusal and continuous refusal of certain defendants to accept from or deliver to certain other defendants at Richmond interstate freight shipped by or to complainants, was and is unlawful; and that the refusal of a certain defendant to interchange interstate freight with another defendant at Roanoke during a five-week period ending in August, 1940, was unlawful. Complaint dismissed as to certain defendants and cease and desist order entered as to others.

*Jack R. Turney, Jr.*, for complainants.

*E. H. Deacon, Raymond Gittleman, Leonard R. Hall, Morton J. Hollander, Everett B. Lackie, Ralph C. Lynn, Glenn F. Morgan, John L. Walker*, and *Lloyd Watner* for defendants.

*Henry Kaiser, Joseph A. Padway, Fred A. Tobin*, and *Robert A. Wilson* for intervener.

## REPORT OF THE COMMISSION

By the Commission:

Exceptions were filed by complainants, defendant Baltimore Transfer Company, and intervener to the report proposed by the examiner, the complainants replied thereto and the parties were heard in oral argument by division 3. Our conclusions differ somewhat from those recommended.

By complaint filed November 26, 1940, Planters Nut & Chocolate Company, a corporation, having its main office at Suffolk, Va., Tubize Chatillon Corporation, having its main office at New York, N. Y., Roanoke Public Warehouse of Roanoke, Va., Maid Bess Garment Company of Salem, Va., Craddock-Terry Company, a corporation having its main office at Lynchburg, Va., and Elizabeth City Hosiery Mills, a corporation with offices at Elizabeth City, N. C., allege that the refusal of the defendant motor common carriers to transport certain interstate freight, properly packed and addressed, tendered to them by complainants and consigned to various points in the United States and the continual refusal to accept and transport such traffic constitutes a violation of the Interstate Commerce Act, that the failure to perform their duties as common carriers of property, in interstate or foreign commerce, by motor vehicle, as defined in section 203(a)(14) of the act, and to comply with the terms of their published tariffs, which specify joint rates in connection with such shipments over the lines of defendants, is unlawful and that such refusal causes unjust discrimination and undue and un-

reasonable prejudice and disadvantage to complainants in violation of section 216(d) of the act. The complainants pray that an order be entered requiring defendants, and each of them, to cease and desist from the alleged violations of the act and to fulfill their obligations as common carriers under the act by accepting and carrying all freight of complainants, "upon threat of loss of their franchises to operate and for such other relief as the Commission may consider proper in the premises." The Teamsters-Chauffeurs, Warehousemen & Helpers, Local Union No. 592 of Richmond, Va., affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, intervened.

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The testimony presented by the intervener summarized in the preceding paragraph, has been set forth in detail in order that its position may be clearly understood. It argues that the inability of complainants to secure joint-line movement of their freight is caused by the refusal of union employees to handle this freight and is a condition over which the carriers have no control. It asserts that the complaint is an action against the Group two carriers, brought by complainants in collusion with the Group one carriers. It maintains that this proceeding has arisen out of a labor dispute, and the refusal of the union employees to handle the interchange traffic, being "concerted action by employees in ceasing to follow their employment" is in effect a strike against the merchandise of non-union carriers in an attempt to force these carriers into submitting

to the demands of the union that they agree to have a "closed shop." It concludes that the action of its members is within the law and is not governed by the Interstate Commerce Act, and that we are without power to require the interchange of freight between union and non-union carriers notwithstanding the existence of through routes and joint rates.

We permitted the intervener to become a party and to present any evidence germane to the issues raised in the complaint. We have no jurisdiction over labor disputes, strikes, their settlements, or labor issues arising in connection therewith. We, therefore, shall not set forth or discuss the various federal statutes applicable to labor matters and the questions arising in connection therewith, discussed on exceptions and upon oral argument by defendant Baltimore Transfer and the intervener. As stated, the gravamen of the complaint is the refusal of certain common carriers to interchange interstate traffic with other common carriers, and to render to the complainants service which they hold themselves out to perform in their applicable tariffs. Labor difficulties arising in connection with the performance of such common carrier duties cannot be permitted to be used as a valid excuse for the carriers to discontinue rendering to the public the service which they are obliged to perform and to which the public is entitled.

Baltimore Transfer and Brooks argue that they, as corporations, have not refused to interchange interstate frieght with the Group one carriers but admit that their employees have refused to handle such freight. Although

the evidence shows that officials of certain of the Group two carriers also refused to accept shipments tendered by the Group one carriers, the question of fact whether such refusals were the acts of officials or employees, or both, is immaterial. The defendants cannot escape their common carrier obligations by asserting that the violations complained of are caused by their employees. The corporations are responsible under the law for the acts of employees performed in connection with common carrier duties; such acts are not beyond the scope of the employment. We conclude that the Group two carriers have refused and continue to refuse to interchange at Richmond with the Group one carriers interstate freight of complainants Planters and Elizabeth City Hosiery Mills, and that defendant Brooks refused to interchange at Roanoke with Rutherford during a five-week period ending in August, 1940, interstate freight of complainant Maid Bess Garment Company.

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We find that the refusal and continuous refusal of the Group two carriers to accept from, or deliver to, the Group one carriers at Richmond interstate freight shipped by or to complainants Planters and Elizabeth City Hosiery Mills was and is unlawful, particularly with respect to the failure to provide adequate service, to observe just and reasonable practices and to comply with the provisions of their tariffs lawfully on file with this Commission, all in violation of section 216 of the act; and that the refusal of Brooks to interchange with Rutherford at Roanoke inter-

state freight during the five weeks' period ending in August, 1940, was unlawful.

An order will be entered requiring the Group two carriers to cease and desist from the practices herein found to be unlawful and dismissing the complaint as to the other defendants.